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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KELLYE CROFT,

Plaintiff,

vs.

JAMES DOLAN; HARVEY
WEINSTEIN; JD & THE STRAIGHT
SHOT, LLC; THE AZOFF COMPANY
HOLDINGS LLC f/k/a AZOFF MUSIC
MANAGEMENT, LLC; THE AZOFF
COMPANY LLC f/k/a AZOFF MSG
ENTERTAINMENT, LLC; DOE
CORPORATION 1-10,

Defendants.

Case No. 2:24-cv-00371-PA (AGR)

**DEFENDANT HARVEY
WEINSTEIN'S REPLY
MEMORANDUM OF LAW IN
SUPPORT OF HIS MOTION TO
STAY THIS CASE AS TO HIM;**

Date: July 22, 2024
Time: 1:30 p.m.
Location: Courtroom 9A
Judge: Hon. Percy Anderson

1 filed against him, due to those matters resolving, or his deposition being stayed by
2 a Judge.

3 Consequently, there is no urgency to resolve Plaintiff's suit based on 10-
4 year-old allegations, given that the retrial of the New York criminal case will likely
5 be scheduled for trial in just a few months, the California appeal and possible
6 retrial could be resolved within a year or so, and the risk that the availability of
7 witnesses, documents, or other evidence would be affected by a stay solely as to
8 Defendant Weinstein is remote. Accordingly, the undue prejudice to Defendant if
9 he is to invoke his Fifth Amendment privilege against self-incrimination in this
10 case far outweighs any perceived prejudice to Plaintiff. Thus, this Court should
11 exercise its discretion and grant Defendant's motion to stay.

12 Argument

13 **I. THE CRIMINAL CONDUCT PLAINTIFF ALLEGES DEFENDANT** 14 **COMMITTED IMPLICATES HIS FIFTH AMENDMENT RIGHTS**

15 In her Opposition, Plaintiff does not dispute that a district court has
16 discretion to grant a stay pending the outcome of a related criminal case. *See, e.g.,*
17 *Securities & Exchange Comm'n v. Dresser Indus.*, 628 F.2d 1368, 1374 (D.C.
18 Cir.), *cert. denied*, 449 U.S. 993 (1980); *Keating v. Office of Thrift Supervision*,
19 45 F.3d 322, 326 (9th Cir. 1995). Instead, Plaintiff contends that Defendant will
20 not incriminate himself because there is no factual overlap between his criminal
21 cases in California and New York, and this action. *See, e.g., United States v.*
22 *Kordel*, 397 U.S. 1, 12 n.27 (1970). *See also Keating*, 45 F.3d at 324 (in response
23 to a motion to stay, courts should consider "the extent to which the defendant's
24 fifth amendment rights are implicated"); *Continental Ins. Co. v. Cota*, 2008 WL
25 4298372, *2 (N.D. Cal. Sept. 19, 2008) (the extent to which fifth amendment rights
26 are implicated by a civil proceeding is the *first* consideration when evaluating a
27 stay request) (emphasis added).

1 However, it is Plaintiff herself who alleges that Defendant's conduct
 2 towards her was criminal: "Defendant Harvey Weinstein committed an assault and
 3 battery against Plaintiff ... as defined in Cal. Penal Code §§ 243.4 and 261."
 4 Second Amended Complaint, ¶ 134. Moreover, Plaintiff wrongly argues that there
 5 is no overlap in allegations between her case and the criminal and other civil cases
 6 against Defendant. For example, as in *Judd*, this action is based on Defendant's
 7 alleged sexual misconduct over a decade ago when he purportedly met with
 8 Plaintiff while wearing a bathrobe in his Beverly Hills hotel room. The *Geiss* case,
 9 a class action against Defendant and others, alleged that Defendant assaulted class
 10 members under very similar circumstances, in hotel rooms and with the prospect
 11 of job opportunities. Indeed, Plaintiff's claims against other defendants here are
 12 predicated on purported knowledge of "Weinstein's history of assaulting and
 13 sexually abusing women." SAC, ¶ 8.

14 Based on her allegations, Plaintiff cannot plausibly argue that this case stands
 15 apart from Defendant's criminal proceedings in New York and California because
 16 there is no factual overlap. Defendant's alleged sexual misconduct is the subject
 17 matter of all the cases; thus, the Court should determine that Defendant's Fifth
 18 Amendment rights are unequivocally implicated should a stay not issue in this
 19 case. *See Keating*, 45 F.3d at 324.

20 **II. PLAINTIFF IGNORES THAT RETRIALS AND ADDITIONAL** 21 **CRIMINAL CHARGES ARE PENDING**

22 Plaintiff's opposition fails to address the fact that Defendant will not only
 23 be retried in New York, but the Manhattan District Attorney's Office has
 24 threatened additional indictments, and that Defendant's appeal of his criminal
 25 conviction in California may result in retrial. Cases in this Circuit have held that
 26 the "strongest case for deferring civil proceedings until after completion of
 27 criminal proceedings" is when the defendant is under indictment. *Jones v. Conte*,
 28

1 2005 WL 1287017, *1 (N.D. Cal. Apr. 19, 2015) (internal quotation omitted); *see*
2 *also Continental Ins. Co. v. Cota*, 2008 WL 4298372, *2 (N.D. Cal. Sept. 19,
3 2008) (stating that the extent to which fifth amendment rights are implicated by a
4 criminal proceeding is the *first* consideration when evaluating a stay request). In
5 *Genentech, Inc. v. JHL Biotech, Inc.*, 2019 U.S. Dist. LEXIS 36140 (N.D. Cal.
6 March 5, 2019), the Court granted the individual indicted defendants’ motion to
7 stay because the Fifth Amendment privilege warrants a stay. The Court rejected
8 the plaintiff’s argument that, even if a stay should issue, those defendants should
9 be ordered to answer the complaint and respond to discovery, ruling that the
10 defendants’ risk of an adverse inference if they invoke the Fifth Amendment
11 outweighs the plaintiff’s requests. *Id.*, * 70-71.

12 Federal courts in other jurisdictions have similarly held that a stay is most
13 justified when the defendant is “under indictment for a serious criminal offense”
14 and, as in this case, “is required at the same time to defend a civil action involving
15 the same subject matter.” *Louis Vuitton, Malletier S.A. v. LY USA, Inc.*, 676 F.3d
16 83, 101 (2d Cir. 2012). Thus, Defendant’s appeals and retrials are the “most
17 important factor” this Court should consider when ruling on this motion.
18 *Maldonado v. City of New York*, 2018 U.S. Dist. LEXIS 93417, at *4 (S.D.N.Y.
19 June 1, 2018) (internal citations omitted). *See also Hicks v. City of New York*, 268
20 F. Supp. 2d 238, 242 (E.D.N.Y. 2003) (“A court will generally stay a civil
21 proceeding when a criminal investigation has ripened into an indictment against
22 the proponent of a stay”).

23 Plaintiff mischaracterizes the federal cases in New York where Defendant
24 was not granted a general stay. In both *Geiss* and *Canosa* the general motions to
25 stay were denied, but the Court in each case stayed Defendant’s deposition. In
26 the New York state cases, Defendant in good faith did not move for a general stay
27 given the adverse rulings in the federal cases. However, in those cases Defendant
28

1 either moved to dismiss or answered, but was permitted to move to stay
 2 Defendant's deposition. Defendant was never deposed in any of the state or federal
 3 cases in New York. Ansari Reply Dec., ¶ 3. Furthermore, procedurally in New
 4 York, and in contrast to the Federal Rules, a defendant may simply state "Denied"
 5 in answer to each paragraph of the complaint if he or she so chooses. As such,
 6 answering a complaint is not tantamount to any waiver, or degradation, of one's
 7 constitutional rights. Ansari Reply Dec., ¶ 4.

8 **III. ALL OF THE REMAINING KEATING FACTORS WEIGH IN**
 9 **FAVOR OF ISSUING A STAY IN THIS CASE**

10 As shown above and in the moving papers, Defendant's Fifth Amendment
 11 rights will clearly be implicated if he is to defend this case while under indictment
 12 or retrial for felonies arising from alleged sexual misconduct purportedly
 13 exhibiting the same *modus operandi*, intent, and common scheme as Plaintiff
 14 alleges he undertook with her in the hotel room. Thus, because he will stand trial
 15 again, Defendant's invocation of his Fifth Amendment privilege against self-
 16 incrimination in this case will severely prejudice his defense.

17 Defendant has also demonstrated that the remaining *Keating* factors—*i.e.*,
 18 the potential prejudice to Plaintiff because of a delay; judicial efficiency and court
 19 management; interests of non-parties to this litigation; and the public interests in
 20 the pending actions--all weigh in his favor.

21 First, "[a]lthough Plaintiff has an interest in proceeding expeditiously,"
 22 Judge Wilson in *Huett* did "not find that a stay would cause substantial prejudice.
 23 This is especially so given that the alleged conduct in this case took place in 2010.
 24 FAC ¶ 11." The Court there further found that "[t]here is also no reason to believe
 25 that the availability of witnesses, documents, or other evidence would be affected
 26 by a stay." *Dominique Huett v. The Weinstein Company LLC*, No. CV 18-6012
 27 SVW (MRWx) (motion to stay granted, Dkt. 50, at 3). Indeed, given the passage
 28

1 of more than 10 years since the alleged events, “there is little reason to believe that
 2 the evidence is likely to deteriorate any more than it already has in the many years
 3 since the events underlying this case took place.” *Judd v. Weinstein*, 2:18-cv-
 4 05724 PSG (FFMx) (motion to stay granted, Dkt.62 at 5)

5 Second, even though the Court has an interest in clearing its docket and
 6 promoting judicial efficiency, the other judges of this Court still granted the stay
 7 orders.

8 Third, there is no harm to the interests of the public and non-parties if this
 9 litigation is stayed pending completion of the criminal proceedings. Plaintiff seeks
 10 a financial compensation from Defendant that is unique to her, not class relief.

11 Conclusion

12 Accordingly, for the reasons stated above and in the moving papers,
 13 Defendant Harvey Weinstein respectfully requests the Court to grant his motion
 14 to stay.

15
 16 Dated: July 8, 2024

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 18 /s/ Phyllis Kupferstein

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Harvey Weinstein, certifies that this brief contains 1,894 words, which complies with the word limit of Local Rule 11-6.1.

Dated: July 8, 2024

By: /s/ Phyllis Kupferstein
Phyllis Kupferstein